

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

APR 26 PM 12:09
US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

**KELLY LELEUX, on behalf of herself
and those similarly situated,**

Plaintiff(s),

vs.

Case No.: 17-CV-747-ORL-31-TBS

**THE COVELLI FAMILY LIMITED
PARTNERSHIP, COVELLI FAMILY
LIMITED PARTNERSHIP II,
COVELLI FAMILY LIMITED
PARTNERSHIP III, d/b/a PANERA
BREAD,**

Defendants. _____/

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, KELLY LELEUX, on behalf of herself and those similarly situated ("Plaintiff"), and sues the Defendant, THE COVELLI FAMILY LIMITED PARTNERSHIP, COVELLI FAMILY LIMITED PARTNERSHIP II, and COVELLI FAMILY LIMITED PARTNERSHIP III, D/B/A PANERA BREAD, under the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b) (the "FLSA") for unpaid overtime wage compensation.

INTRODUCTION

1. This is an action by the Plaintiff against her former employer for unpaid overtime pursuant to the Fair Labor Standards Act ("FLSA"). Plaintiff seeks overtime damages, liquidated damages, attorney's fees and costs, and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. §216(b) (the "FLSA").

2. Plaintiff also seeks an Order conditionally certifying this case as a collective action to include all similarly situated “Catering Coordinators” who did not receive proper overtime wages within the last three years.

JURISDICTION

3. Defendant, Covelli Family Limited Partnership, is a Limited Liability Partnership formed and existing under the laws of the State of Florida, doing business in Florida and Ohio, and at all times during Plaintiff’s employment, was an employer as defined by 29 U.S.C. §203.

4. Defendant, Covelli Family Limited Partnership II, is a Limited Liability Partnership formed and existing under the laws of the State of Florida, doing business in Florida and Ohio, and at all times during Plaintiff’s employment, was an employer as defined by 29 U.S.C. §203.

5. Defendant, Covelli Family Limited Partnership III, is a Limited Liability Partnership formed and existing under the laws of the State of Florida, doing business in Florida and Ohio, and at all times during Plaintiff’s employment, was an employer as defined by 29 U.S.C. §203.

6. All three Defendants combine to form one single, joint enterprise (“Covelli”) for purposes of operations of its restaurants doing business as Panera Bread.

7. All three Defendants jointly employ, control, hire, fire, pay, train, reprimand, set policies, and coordinate employees under the Covelli umbrella.

8. This action arises under the Fair Labor Standards Act, 29 U.S.C. §210, *et seq.* The Court has jurisdiction over the FLSA claim pursuant to 28 U.S.C. §1331 and the FLSA.

VENUE

9. The venue of this Court over this controversy is proper based on the claim arising in Altamonte Springs, Florida (Seminole County).

COVERAGE

10. At all material times relevant to this action (2014-2017), the Defendant, COVELLI, was an enterprise covered by the FLSA, and as defined by 29 U.S.C. §203(r) and §203(s).

11. At all material times relevant to this action (2014-2017), the Defendants, COVELLI, made gross earnings of at least \$500,000.00 annually.

12. At all material times relevant to this action (2014-2017), the Defendants, COVELLI, had two or more employees engaged in interstate commerce, producing goods for commerce, or handling, selling or otherwise working on goods or materials that have been moved in or produced for such commerce. (i.e. computer and office equipment, office supplies and telephones, cash registers and other restaurant equipment, food and beverages, etc.)

13. At all material times relevant to this action (2014-2017), Defendants, COVELLI, had two or more employees who routinely ordered materials or supplies from out of state vendors.

14. At all material times relevant to this action (2014-2017), Defendants, COVELLI, had two or more employees who used the telephone and/or computers to place and accept business calls with out of state customers on a daily basis in the normal course of its business.

15. Upon information and belief, the records, to the extent that any exist, concerning the number of hours worked and amounts paid to Plaintiff are in the possession, custody and control of Defendants.

FACTUAL ALLEGATIONS

Covelli's Business Operations

16. COVELLI is part of a U.S. chain featuring bakery products, sandwiches, and salads advertised as "Panera Bread."

17. Covelli is the largest franchisee of Panera Breads in the country.

18. Its portfolio also includes Dairy Queen and O'Charley's stores.

19. Covelli operates in at least in 2 states: Florida and Ohio.

20. Covelli has nearly 100 locations in Florida alone.

21. Covelli has over 1000 employees. *See* Covelli website at <http://www.covelli.com/panera-bread-locations/#1452497213434-fca8da0d-c263>.

Problem #1

22. According to Covelli, it adheres to a core philosophy: treat employees and customers with respect and dignity; however, that is not always the case.

23. Covelli employs employees commonly referred to as "Catering Coordinators."

24. Covelli's Catering Coordinators work in Florida and Ohio.

25. Plaintiff was employed by Defendants as "Catering Coordinator" at various (6) store locations throughout Seminole County and the surrounding area.

26. Catering Coordinators perform catering services on behalf of Covelli, including but not limited to: taking orders, coordinating details with customers, preparing food, delivering food, and are in charge of ensuring that customers' catering orders are delivered accurately and on time.

27. Catering Coordinators work in-house and in other locations.

28. Catering Coordinators are hourly paid employees.

29. Catering Coordinators also receive(d) bonuses based on store production.

30. Catering Coordinators also receive(d) delivery fees, plus tips.

31. Catering Coordinators typically work more than forty (40) hours per week.

32. Plaintiff typically worked fifty (50) to fifty-five (55) hours per week.

33. Catering Coordinators are eligible for overtime pay.

34. In fact, Plaintiff received overtime pay.

35. However, Covelli failed to include Plaintiff's bonus pay, delivery fees and tips within her regular rate of pay when calculating/compensating her overtime compensation.

36. As a result, Covelli failed to pay proper overtime pay in violation of 29 U.S.C. 207(e).

Problem #2

37. Catering Coordinators receive many calls, emails, and text messages either prior to or after their shifts end.

38. Additionally, Catering Coordinators, including Plaintiff, would be contacted by Covelli employees, including management, or customers while “off the clock” about specific orders. Plaintiff would then have to communicate with the baking staff to provide them with further details.

39. These messages come from both Covelli employees and managers and also customers who have changes or questions regarding their orders.

40. Catering Coordinators are not compensated for these out of office communications.

41. As a result, Catering Coordinators were not paid overtime for *all* hours worked over forty within a workweek.

42. Defendants failed to comply with 29 U.S.C. §§ 201-209, because Plaintiff performed services for Defendants for which no provisions were made by Defendant to properly pay Plaintiff for those hours worked in excess of 40 within a workweek.

43. Defendants employed other individuals who performed the same or similar job duties under the same pay provisions as Plaintiff.

44. Upon information and belief, the records – to the extent such records exist – concerning the number of hours worked and amounts paid to Plaintiff, and others similarly situated to them, are in the possession, custody, or control of Defendants.

COLLECTIVE ACTION ALLEGATIONS

45. Plaintiff and the other Catering Coordinators (“the class members”) performed the same or similar job duties as one another in that they provided catering support for Defendants.

46. Plaintiff and the class members work similar hours in that they typically work more than forty (40) hours per week.

47. Plaintiff and the class members were eligible for overtime pay.

48. Covelli did not include bonus pay in the regular rate of pay when calculating/compensating overtime pay for Plaintiff and the class members.

49. Covelli did not include delivery fees and tips in the regular rate of pay when calculating/compensating overtime pay for Plaintiff and the class members.

50. Further, Plaintiff and the class members were subjected to the same pay provisions in that they were not paid overtime compensation for all hours worked over forty (40) hours in a work week, during one or more weeks.

51. Thus, the class members are owed overtime wages for the same reason as the Plaintiff.

52. Defendants’ policy or practice was applicable to Plaintiffs and the class members. Application of this policy or practice does not depend on the personal circumstances of Plaintiff or those joining this lawsuit. Rather, the same policy or practice which resulted in the non-payment of overtime wages to Plaintiffs applies to all class members.

53. Defendants knowingly, willingly, or with reckless disregard carried out its illegal pattern or practice of failing to pay overtime wages with respect to Plaintiff and the class members.

54. Defendants acted willfully in failing to pay Plaintiff and the class members in accordance with the law.

55. Defendants were aware of the time and record keeping requirements of the Fair Labor Standards Act, but willfully or recklessly failed to keep accurate pay and time records as required.

56. In addition, Defendants have been sued over a dozen times for similar and the same violations nearly a dozen times, yet refused to change its practices or pay back overtime pay.

57. Defendants did not act in good faith or reliance upon any of the following in formulating its pay practices: (a) case law, (b) the FLSA, 29 U.S.C. § 201, *et seq.*, (c) Department of Labor Wage & Hour Opinion Letters or (d) the Code of Federal Regulations.

COUNT ONE - RECOVERY OF OVERTIME COMPENSATION

58. Plaintiff reasserts and incorporates by reference all allegations contained within previous paragraphs 1 through 57.

59. During her employment with Defendants, Plaintiff worked more than forty (40) hours in one or more workweeks while employed by Defendants.

60. Defendants failed to properly compensate Plaintiff for overtime hours that they worked, in violation of the FLSA.

61. Defendants acted willfully, intentionally, and/or recklessly in failing to pay Plaintiff at least time half their regular hourly rate of pay for each hour worked over forty (40) hours in one or more workweeks while employed by Defendants, in violation of the FLSA.

62. Defendants did not act in good faith or reliance upon any of the following in formulating its pay practices: (a) case law, (b) the FLSA, 29 U.S.C. § 201, *et seq.*, (c) Department of Labor Wage & Hour Opinion Letters or (d) the Code of Federal Regulations.

DAMAGES AND RELIEF SOUGHT FOR MEMBERS OF THE CLASS

63. This action is brought by Plaintiffs, for themselves and on behalf of all others similarly situated, under the provisions of the FLSA for: (i) monetary damages to be paid by the Defendant associated with the above claims; (ii) liquidated damages; and (iii) relief incident and subordinate thereto, including the costs and expenses of this action and an award of attorneys' fees and reimbursement of expenses to Plaintiff's counsel.

DEMAND FOR JURY TRIAL

64. Plaintiff also demands a trial by jury.

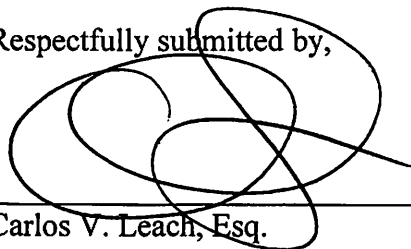
WHEREFORE, Plaintiff demands an Order awarding:

- a. Payment of Plaintiff, and all class members, overtime wages at the correct rate of time and a half of Plaintiff's regular rate pursuant to the FLSA;
- b. An equal amount of liquidated damages, or in the alternative, pre-judgment and post-judgment interest at the highest rate allowed by law;
- c. Pre-judgment and Post-judgment interest where applicable;

- d. Reasonable attorneys' fees and costs for all time worked by the attorneys for Plaintiffs in prosecuting this case; and
- e. All other relief that the Court deems just and proper.

Dated this 26th day of April, 2017.

Respectfully submitted by,

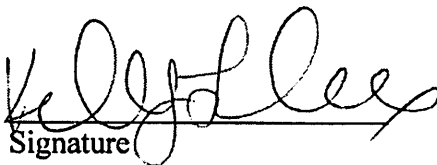


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Attorneys for Plaintiff(s)

IN RE: PANERA BREAD/COVELLI ENTERPRISES OVERTIME LAWSUIT

NOTICE OF CONSENT TO JOIN

Pursuant to 29 U.S.C. § 216(b), I **KELLY LELEUX**, consent to become a party plaintiff in this action.

By: 
Signature

Date: 4/20/17

Kelly Leleux
Printed Name

Address: c/o: Morgan and Morgan, P.A.
191 Peachtree Street, Suite 4200
Post Office Box 57007
Atlanta, Georgia 30343-1007

JS 44 (Rev. 11/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
KELLY LELEUX, on behalf of herself and those similarly situated,

(b) County of Residence of First Listed Plaintiff Seminole
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
MORGAN & MORGAN, P.A.
 20 North Orange Avenue, Orlando, FL 32802-4979
 (407) 849-2319

DEFENDANTS
THE COVELLI FAMILY LIMITED PARTNERSHIP, COVELLI FAMILY LIMITED PARTNERSHIP II, COVELLI FAMILY LIMITED PARTNERSHIP III, d/b/a PANERA BREAD,

County of Residence of First Listed Defendant Seminole
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 216(b)

Brief description of cause:
 Action for unpaid overtime wage compensation.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Unknown at this time CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 04/26/2017 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Employee Rises Against Panera Bread in O.T. Lawsuit](#)
